IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

WP(C).No. 25950 of 2004(L)

OS.369/2003 of PRL.MUNSIFF, KASARAGOD

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PETITIONER:

AHAMMAD MAQSOOD,
SON OF M.K.MOHAMMED KUNHI,
RESIDING AT M.K.MAHAL, FORT ROAD, KASARGODE.

BY ADV. SRI.MVS.NAMBOOTHIRY
SRI.P.V.JAYARAJAN

RESPONDENTS:

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1. T.ABDUL HAMEED @ HAMEED THERUVATH,
NABGARA MANZIL, THERUVATH KOYA ROAD,
THALANGARA VILLAGE, KASARAGOD TALUK AND DISTRICT.

2. MRS. B.M.HALEEMA,
W/O. T.ABDUL HAMEED @ HAMEED THERUVATH,
RESIDING AT -DO- -DO-.

3. M.A.MOIDU, S/O. ABDULLA,
RESIDING AT SHEREOF MANZIL, PENNIPARA,
HIDAYATH NAGAR, P.O.MADHUR VILLAGE,
KASARGOD TALUK AND DISTRICT.

4. SMT.P.H.WAHEEDA RAHIMAN,
W/O. N.M.HASHIM, RESIDING AT ANANGOOR,
KASARGOD VILLAGE AND POST, KASARGODE TALUK AND
DISTRICT.

BY ADV. SRI.D.KRISHNA PRASAD
SRI.D.NARENDRANATH
SRI.M.HARISHARMA
SRI.P.K.IBRAHIM

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

PIUS C. KURIAKOSE, J.

W.P.(C) No. 25950 OF 2004

Dated this the 30th day of May, 2007

JUDGMENT

Notwithstanding the strong and persuasive submissions of Sri.M.V.S. Namboothiri, I am not persuaded to hold that Ext.P6 order of the learned Munsiff dismissing an application for amendment filed by the petitioner-plaintiff is vitiated to such an extent as to warrant correction by this Court in its jurisdiction under Article 227 which is visitorial in nature and is expected to be invoked only in exceptional circumstances. It cannot be said that Ext.P6 order is wholly unreasonable. The suit was for return of the advance amount paid on account of an agreement for sale of property belonging to respondents 1 & 2. There was some dispute between the petitioner and respondents 1 & 2 regarding the actual extent of the property. The petitioner requested respondents 1 & 2 to have a measurement of the property so that the correct consideration payable can be determined. Respondents 1 & 2, for reasons best known to them, were not willing for a measurement. The suit was instituted by the petitioner specifically repudiating the contract on the reason that the respondents 1 & 2 are not willing to have a measurement and seeking the recovery of advance amount only. In other words, by filing the suit as one for recovery of advance amount

only the petitioner has admitted that he does not want a decree for specific performance. Respondents 3 and 4 are persons who purchased the property after repudiation of the agreement. On finding that the consideration set out in the document executed in favour of the additional defendants 3 & 4 it is far lesser than the consideration for which the petitioner had contracted to purchase the property, the petitioner filed the application for amendment so as to convert the suit as one for specific performance of contract also. The learned Munsiff rightly found that allowing the amendment will alter the character of the suit and more importantly, will cause prejudice to the defendants. Amendment changing the character of the suit may be permissible. But there is clear embargo in statutory law as well as settled by judgment of the Supreme Court in **M/s.Modi Spinning & Weaving Mills Co.Ltd v. M/s.Ladha Ram & Co.** (AIR 1997 SC 680) and other cases to amendments causing prejudice to the adversary. Ext.P6 in my opinion is not liable to be interfered with at any rate in the visitorial jurisdiction under Article 227 of the Constitution.

The Writ Petition will stand dismissed. No costs.

PIUS C. KURIAKOSE, JUDGE

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